

GRANT KIRKHAM
ROBERTA KIRKHAM

IBLA 81-882

Decided September 24, 1981

Appeal from decision of Utah State Office, Bureau of Land Management, which declared unpatented mining claims to be abandoned and void. U MC 139497 and U MC 139498.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Administrative Authority: Generally--Federal Employees and Officers: Authority to Bind Government

Reliance upon erroneous or incomplete information provided by Federal employees does not create any rights not authorized by law.

APPEARANCES: Grant and Roberta Kirkham, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Grant and Roberta Kirkham appeal a decision dated May 28, 1981, in which the Utah State Office, Bureau of Land Management (BLM), declared the Elizabeth K. Nos. 3 and 6 lode mining claims abandoned and void because evidence of assessment work or a notice of intention to hold the claims had not been filed with BLM on or before October 22, 1979, as required by 43 CFR 3833.2-1. Further, the BLM decision declared the mining claims to be null and void ab initio in part, because portions of the claims are located on patented lands that were not available for mining location when the claims were located.

Appellants appeal only that part of the decision regarding the filing of the affidavit of assessment work done for the year 1979. They recite that an affidavit of assessment work had been filed for record in Tooele County, Utah, and that it would have been a simple matter to have filed a copy of the affidavit with BLM along with the other required information but that employees of BLM did not tell them that such affidavit was required nor did the written instructions supplied by BLM mention such a requirement.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires that the owner of an unpatented mining claim located on or before October 21, 1976, must have filed evidence of assessment work performed during the preceding assessment year or a notice of intention to hold the claim with the proper office of BLM on or before October 22, 1979, or the claim will be deemed conclusively to be abandoned and void. John J. Schnabel, 50 IBLA 201 (1980); A. W. Josue, 48 IBLA 225 (1980). The statutory requirements are replicated in 43 CFR 3833.2-1(a) and 3833.4.

[2, 3] The claims at issue were located in 1969 and 1972. The fact that appellants may have been unaware of the recordation requirements of FLPMA, while unfortunate, does not excuse them from compliance. Those who deal with the Government are presumed to have knowledge of the applicable law and the regulations duly promulgated pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510. Further, reliance upon erroneous or incomplete information or opinions provided by an officer, agent or employee of the Department cannot operate to vest any right not authorized by law. Energy Trading, Inc., 50 IBLA 9 (1980); 43 CFR 1810.3(c).

As the required documents were not filed with the proper BLM office on or before October 22, 1979, the claims were properly deemed to be abandoned and void. Susan Mativo, 52 IBLA 134 (1981). This Board has no authority to waive failure to comply with statutory requirements, nor to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.

